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 8 Gibby Novelties, LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

13 PAUL MONTWILLO, an individual) CASE NO. C 07 3947 SI
 14 Plaintiff,) Declaration of David Y. Wong in Support of
 15 vs.) Opposition to Plaintiff's Motion for Summary
 Judgment
 16 WILLIAM TULL; DANIEL GIBBY;) (FRCP RULE 56(C)
 17 GIBBY NOVELTIES, LLC dba ARSENIC) April 25, 2008
 & APPLE PIE, a California Limited) 9:00 a.m.
 18 Liability Corporation and DOES 1 through) Judge Illston, Courtroom 10
 20, inclusive,)
 19 Defendants.) The Federal Building
 20) 450 Golden Gate Avenue
 21 And related Counter-Claim) San Francisco, CA 94102

22 Complaint filed: August 1, 2007

26 I, David Y. Wong, declare:

27 1. I am an attorney licensed by the State of California, admitted to practice before this
 28 Court since 1982, and I am co-counsel for Defendants William Tull, Daniel Gibby and

MONTWILL V. TULL, ET AL. USDC Action No. C 07 3947 SI

Declaration of Wong – Opposition to Plaintiff's Motion for Summary Judgment

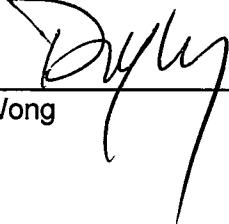
1 Gibby Novelties, LLC. I am authorized by my clients to make this Declaration in support of their
2 Motion for Summary Judgment, filed herewith.

3 2. On the afternoon of March 10, 2008, I attended the deposition of the Plaintiff, Paul
4 Montwillo, in this action. Mr. Montwillo was represented in his deposition by his attorney,
5 Stephen A. Sommers.

6 3. The Memorandum of Points and Authorities contains citations to deposition
7 testimony of Plaintiff Paul Montwillo. Attached hereto and incorporated by reference herein are
8 true and correct copies of the following deposition transcript pages, in full, wherein each of the
9 cited testimony excerpts may be found. The pages attached are arranged in numerical order,
10 as follows: Pages 27, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 70, 91, 92,
11 93, 94, 95, 107, 108.

13 I certify under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct, and that I am able to testify competently thereto.

15 Executed in Mill Valley, California on April 3, 2008.

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19 David Y. Wong
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MONTWILLO DEPOSITION

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3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5

6 PAUL MONTWILLO, an)
individual,)
7)
Plaintiff,)
8 vs.) No. C 07 3947 SI
9)
10 WILLIAM TULL; DANIEL GIBBY; GIBBY) Pages 1 thru 124
NOVELTIES, LLC dba ARSENIC & APPLE)
PIE, a California Limited)
Liability Corporation and DOES 1)
11 through 20, inclusive,)
12)
13 Defendants.)
14)
15)
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25)

Deposition of

PAUL MONTWILLO

March 10, 2008

Reported By:

JAN BROWN JONES # 4685

COPY

JAN BROWN & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

701 Battery St., 3rd Floor, San Francisco, California 94111

(415) 981-3498 or (800) 522-7096

PAUL MONTWILLO - MARCH 10, 2008

10:36 1 MR. WONG: It wasn't in the file.

13:40:36 2 MR. SOMMERS: And when I broke before I

13:40:40 3 was confusing this one with that one.

13:40:43 4 MR. GREENBERG: Okay.

13:40:44 5 Q. Do you know where you might have a copy of that?

13:40:47 6 A. I might have given it to my previous counsel. I

13:40:53 7 just gave him whatever I had, you know.

13:40:57 8 Q. Now, you indicated I believe in earlier testimony

13:41:00 9 that when Mr. Tull got out of the case you were

13:41:04 10 still in it for a period of time.

13:41:07 11 A. Yes, sir.

13:41:07 12 Q. Was it three months, six months, how long?

13:41:10 13 A. A year.

13:41:11 14 Q. I'm sorry?

13:41:11 15 A. A year.

13:41:12 16 Q. A year. So your settlement with Mattel was

13:41:17 17 sometime in 1998. Is that right?

13:41:19 18 A. It was actually -- I remember because I was leaving

13:41:22 19 to go home for Christmas. It was December of '97.

13:41:26 20 Q. And so you signed off and were done with Mattel by

13:41:29 21 December of '97. Is that right?

13:41:32 22 A. Yeah.

13:41:40 23 Q. In response to this lawsuit -- well, let me back

13:41:46 24 up. In March of '97, nine months or so before you

13:41:53 25 reached your settlement, were you in production,

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52:13 1 MR. GREENBERG: So I think we had a
13:52:14 2 question pending, did we?

13:52:16 3 THE WITNESS: Repeat the question,
13:52:18 4 please.

13:52:42 5 MR. GREENBERG: Yes, she's going to read
13:52:42 6 it back for you.

13:52:42 7

13:52:42 8 (Record read as requested.)

13:52:42 9

13:52:42 10 MR. GREENBERG:

13:52:42 11 Q. You indicated that you changed the body of the doll
13:52:44 12 so as to avoid further problems with Mattel. Is
13:52:47 13 that right?

13:52:47 14 A. That's correct.

13:52:48 15 Q. What change did you make?

13:52:50 16 A. I just used a different body.

13:52:53 17 Q. Did you create that body or did you find an
13:52:56 18 existing --

13:52:57 19 A. It was a doll.

13:52:58 20 Q. What was the source?

13:53:03 21 A. Toy stores, big lots, whatever.

13:53:07 22 Q. I see. So you either bought or found other dolls
13:53:12 23 to create the replacement dolls from?

13:53:19 24 A. Yeah.

13:53:21 25 Q. Did you actually -- well, let me back up. Let's

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13:56:51 1 responsibilities?

13:56:51 2 A. Uh-huh. Yes.

13:56:53 3 Q. And then it says that you will be primarily

13:56:56 4 responsible for art direction, design and

13:56:58 5 advertising of the product line.

13:57:01 6 Do you see that sentence?

13:57:02 7 A. Yes.

13:57:02 8 Q. What product line is referred to there?

13:57:06 9 A. Toys.

13:57:07 10 Q. Sorry?

13:57:07 11 A. Toys.

13:57:08 12 Q. What kind of toys?

13:57:10 13 A. Dolls.

13:57:12 14 Q. Dolls. Any others contemplated at this time?

13:57:18 15 A. Yeah, I think so. We were talking about watches

13:57:22 16 back then and -- yeah, I was designing some

13:57:26 17 watches. I don't remember what else, T-shirts.

13:57:33 18 Q. Okay. And were all of these products, this product

13:57:38 19 line referred to here, was this all the Trailer

13:57:41 20 Trash concept put into different products?

13:57:47 21 A. Yes.

13:57:49 22 Q. Okay. Just so you and I have an understanding when

13:57:53 23 we're referring to "product line," would it be fair

13:57:57 24 to say that it's the Trailer Trash product line?

13:57:59 25 A. Well, we did drag queens too.

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13:58:03 1 Q. Okay. So Trailer Trash and drag queens.

13:58:06 2 A. Yes; I mean, I designed 35 probably different

13:58:10 3 concepts reproduced many, many times. But yeah,

13:58:13 4 when I originally did this stuff, I was doing it in

13:58:17 5 my little studio in the back of my house, in the

13:58:20 6 back of my apartment. So I mean, no two were

13:58:24 7 exactly the same, nothing was identical.

13:58:28 8 Like, say, a Trailer Trash doll could be

13:58:30 9 wearing like the Daisy Duke shorts and that little

13:58:34 10 red halter top. Or she would be wearing a leather

13:58:39 11 jacket, you know. It just looked like whatever

13:58:42 12 clothes I could make or find or come up with that

13:58:45 13 looked like Trailer Trash, so --

13:58:48 14 Q. So if I understand you correctly, what you are

13:58:50 15 really talking about is that each doll you did was

13:58:56 16 essentially custom- and handmade. Is that true?

13:58:59 17 A. Yeah. Well, I don't know about custom.

13:59:01 18 MR. SOMMERS: Objection, because it's

13:59:02 19 vague as to time.

13:59:04 20 MR. GREENBERG: Sure. Just so you are

13:59:06 21 clear.

13:59:06 22 Q. I'm referring to the period of time here in 1997

13:59:11 23 prior to the December settlement with Mattel on

13:59:14 24 your part that you referred to, basically March to

13:59:18 25 December '97. So we're talking about a nine-month

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1 59:21 1 period here. And during that time I believe you
13:59:23 2 were talking about making individual dolls in your
13:59:28 3 studio and that each one was different. Is that
13:59:31 4 correct?

13:59:33 5 A. Well, I guess -- well, I wasn't making that many
13:59:36 6 anymore because I wasn't selling them at that time.
13:59:38 7 I was still making them and photographing them, but
13:59:41 8 they weren't for sale at that time.

13:59:44 9 Q. And the ones that had been for sale prior to that
13:59:49 10 time were the ones that used the Barbie body. Is
13:59:53 11 that correct?

13:59:54 12 A. Uh-huh. Yes, yes.

13:59:57 13 Q. So after March of '97 through December of '97,
14:00:03 14 while you continued to make some different designs,
14:00:06 15 you didn't offer any of those dolls for sale. Is
14:00:09 16 that right?

14:00:10 17 A. Not during that time period.

14:00:11 18 Q. Okay. And it goes on in discussing this in
14:00:19 19 Exhibit 2, the Partnership Agreement, third
14:00:23 20 paragraph, that your responsibilities would include
14:00:28 21 corporate ID, product design, package design,
14:00:32 22 website design and maintenance and print
14:00:34 23 advertising.

14:00:35 24 Is that your understanding of what your
14:00:37 25 responsibilities were?

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10:38 1 A. Uh-huh. Yeah, I was -- yeah.

14:00:45 2 Q. And then skipping down a paragraph to the fifth

14:00:50 3 paragraph on this page, it says, quote, "In return

14:00:53 4 for their efforts each party shall receive

14:00:55 5 50 percent of the net profits from the business,

14:00:58 6 after Mr. Tull has been returned his initial

14:01:01 7 investment plus interest at the current APR."

14:01:05 8 "APR" standing for annual percentage

14:01:07 9 rate. Is that right?

14:01:09 10 A. Yes.

14:01:09 11 Q. Is this an accurate statement of your understanding

14:01:13 12 of how the proceeds of your business with Mr. Tull

01:19 13 were going to be divided?

14:01:20 14 A. Yeah. That was very naive of me.

14:01:23 15 Q. Why do you say it was naive of you?

14:01:27 16 A. Well, nowadays, you know, I never would have signed

14:01:35 17 anything like that.

14:01:36 18 Q. Okay. And why is that?

14:01:37 19 A. I knew nothing about business.

14:01:40 20 Q. So you don't consider yourself to be savvy as a

14:01:45 21 businessman?

14:01:46 22 A. Yes, I agree with that statement.

14:01:49 23 Q. All right. And the last paragraph says, quote,

14:02:01 24 "This contract will remain in effect for two years

02:04 25 from date signed or until a limited liability

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12:07 1 corporation has been formed," close quote.

14:02:10 2 Was a limited liability corporation

14:02:12 3 formed within two years of July 1997?

14:02:17 4 A. I believe it was, yes.

14:02:18 5 Q. Okay. From July 1997 going forward, did you design

14:02:30 6 for manufacture a Trailer Trash doll product?

14:02:39 7 MR. SOMMERS: Objection, vague,

14:02:40 8 ambiguous.

14:02:42 9 THE WITNESS: It was previously designed.

14:02:45 10 I got a body from China and I just designed it --

14:02:52 11 that wasn't redesigned, it was the same as before.

14:02:56 12 MR. GREENBERG: Okay.

12:57 13 Q. So would it be fair to say that you got you said a body from China and then incorporated the other design elements that you had previously done using a Barbie body?

14:03:02 14 A. Yeah.

14:03:06 15 Q. Okay. Who arranged to obtain the body from China?

14:03:21 16 A. Jeff Trojan was the man's name.

14:03:23 17 Q. What is his name?

14:03:25 18 A. Jeff Trojan.

14:03:26 19 Q. Okay. Do you know how to spell that last name?

14:03:29 20 A. Like the condom.

14:03:31 21 Q. Oh, Trojan. Okay. Jeff Trojan.

14:03:33 22 A. And where is Mr. Trojan these days?

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1 3:36 1 A. I have no idea. I have tried to contact him in the
14:03:39 2 past and he's disappeared.

14:03:42 3 Q. He lived in San Francisco at the time?

14:03:44 4 A. Los Angeles. The last I heard from him he was in
14:03:47 5 Los Angeles.

14:03:48 6 Q. And what was his involvement in getting the doll
14:03:51 7 body?

14:03:52 8 A. He was a contact to Hong Kong for us, or China,
14:03:58 9 wherever they are.

14:04:06 10 Q. Well, can you tell me, please, a little bit about
14:04:13 11 how the process of this manufacturing of dolls took
14:04:16 12 place using these bodies?

14:18 13 MR. SOMMERS: Calls for a narrative.

14:04:20 14 MR. GREENBERG: It does indeed.

14:04:25 15 THE WITNESS: So it was the same process,
14:04:27 16 like I would strip down a Barbie. Well, they gave
14:04:31 17 me a stripped down body, added the exact same
14:04:35 18 things, you know, darkened the roots, gave it a
14:04:38 19 cigarette, dressed it, you know, and sent it off to
14:04:41 20 them.

14:04:42 21 So then they would try and copy me. And
14:04:47 22 then they would send it back to me and I would say,
14:04:51 23 "No, you did this wrong, you did that wrong, modify
14:04:54 24 it." So back and forth like that.

14:57 25 MR. GREENBERG:

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14:57 1 Q. So what you were doing was, you were creating the
14:04:59 2 prototype and they would then attempt to make a
14:05:04 3 copy of that. You were testing back and forth to
14:05:07 4 make sure you got a final version that everyone was
14:05:10 5 satisfied with. Is that accurate?

14:05:13 6 A. Yeah. I was just trying to get them to accurately
14:05:16 7 copy my work, yeah.

14:05:17 8 Q. Once you had reached agreement, was it your
14:05:19 9 understanding that once you had reached an
14:05:20 10 agreement and you were satisfied with what they had
14:05:23 11 done, they would then go into mass production to
14:05:26 12 make a number of dolls?

14:05:27 13 A. Yes.

14:05:29 14 Q. Okay. And were they shipping finished packaged
14:05:32 15 dolls back or was packaging done here?

14:05:35 16 A. It was done there.

14:05:36 17 Q. It was done there. So you got basically boxes
14:05:40 18 filled with individual packaged boxes.

14:05:43 19 A. Yes. I had to design the packaging as well.

14:05:47 20 Q. And you designed the packaging as well.

14:05:50 21 A. Yes.

14:05:50 22 Q. Now, this is taking place -- is this taking place,
14:05:54 23 this process of going back and forth with -- was it
14:05:58 24 China?

14:05:59 25 A. China.

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1 5:59 1 Q. Was this taking place prior to December of 1997?

14:06:04 2 A. No.

14:06:06 3 Q. This took place after you had settled with Mattel?

14:06:09 4 A. That's correct.

14:06:11 5 Q. Was this taking place during the time the

14:06:14 6 partnership was in existence or was it during the

14:06:17 7 time the LLC was in existence or a little of both?

14:06:21 8 MR. SOMMERS: Objection, compound. Go

14:06:22 9 ahead.

14:06:25 10 THE WITNESS: I don't recall.

14:06:26 11 MR. GREENBERG: I understand.

14:06:28 12 THE WITNESS: I would guess it would be

1 6:30 13 after --

14:06:31 14 MR. SOMMERS: Don't guess.

14:06:32 15 MR. GREENBERG:

14:06:32 16 Q. What's your best recollection?

14:06:34 17 A. My best recollection would be after the initial

14:06:37 18 partnership agreement was signed.

14:06:39 19 Q. Okay. But before the LLC?

14:06:45 20 A. I think so. I'm not sure.

14:06:47 21 MR. SOMMERS: Don't guess.

14:06:48 22 MR. GREENBERG: I understand.

14:06:52 23 Q. With respect to this design process that you were

14:06:55 24 going through, the process with China and you

1 6:58 25 finally reached a design that you were satisfied

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07:01 1 with, what was your understanding of who owned that
14:07:03 2 design?

14:07:04 3 MR. SOMMERS: Objection, that the
14:07:06 4 question misstates the testimony that there was a
14:07:08 5 design process.

14:07:10 6 MR. GREENBERG: Well, I'll rephrase that,
14:07:12 7 Counsel. Thank you for the comment.

14:07:14 8 Q. With respect to this process you were going through
14:07:17 9 where you were shipping copies of the prototype
14:07:21 10 back and forth between you and China, as you put
14:07:24 11 it, to get them to get your design right, who owned
14:07:29 12 that final design that came out?

17:31 13 A. I do.

14:07:31 14 Q. "I do." You did?

14:07:33 15 A. Uh-huh.

14:07:34 16 Q. You were in partnership at the time or in an LLC
14:07:37 17 with Mr. Tull. Did Mr. Tull have any ownership
14:07:40 18 interest in this design?

14:07:43 19 A. No, he does not have ownership to my intellectual
14:07:46 20 property. I licensed the designs to the
14:07:52 21 corporation.

14:07:53 22 Q. You did. Let's talk about that.

14:08:00 23 MR. SOMMERS: Before you ask your
14:08:00 24 question, let me take a quick second.

14:08:04 25 MR. GREENBERG: Sure.

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1 8:05

1

14:08:05 2

(Off the record at 2:08 p.m and

14:08:09 3

back on the record at 2:13 p.m.)

14:10:47 4

14:13:42 5

MR. GREENBERG: Are you all set?

14:13:44 6

THE WITNESS: All set.

14:13:44 7

MR. GREENBERG: Back on the record.

14:13:49 8

Q. Mr. Montwillo, before our break you indicated that
you licensed your designs, I believe you said to
the corporation. I think in that respect were you
referring to the partnership and/or the LLC of
Arsenic & Apple Pie?

1 4:08 13

A. Yes.

14:14:09 14

Q. And when you say you "licensed your designs," was
this a written license?

14:14:19 16

A. No. I let the company use my work.

14:14:22 17

Q. Okay. When you indicate you let the company use
your work, is this what you mean by licensed?

14:14:31 19

A. Yes. I don't know like legal terms if this is --
you know. There was no written license.

14:14:39 20

Q. Okay. When you say you let the company use your
work or that you licensed it, I need to know from
you since there wasn't anything in writing, what
the terms of that license were; how long was the
license of the designs to run?

1 4:58 25

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1 15:08 1 A. As long as I was in the company.

14:15:11 2 Q. As long as you were in the company. Okay. And if

14:15:15 3 you left the company, was it your understanding

14:15:19 4 that you would be able to take your rights to the

14:15:24 5 design with you and that the company would no

14:15:27 6 longer be able to use those designs?

14:15:31 7 A. Yes.

14:15:32 8 Q. Okay. And was that irrespective of whether the

14:15:37 9 company at that point was profitable or was in

14:15:42 10 debt? In other words, when you left you left and

14:15:49 11 it didn't matter what the state of the company was

14:15:49 12 at the time?

1 5:49 13 MR. SOMMERS: Objection, compound. Go

14:15:49 14 ahead.

14:15:55 15 THE WITNESS: If I left --

14:15:56 16 MR. GREENBERG: Did you not understand

14:15:57 17 the question? Yes.

14:16:00 18 Q. If you left, what would happen in other words?

14:16:03 19 A. The company could no longer use my work.

14:16:06 20 Q. Okay. And if for example the company --

14:16:12 21 A. The company could purchase the rights to use my

14:16:14 22 work.

14:16:14 23 Q. Okay. Had you set a price on the rights at that

14:16:17 24 time?

1 6:18 25 A. We had discussed it.

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17:01 1 MR. SOMMERS: Objection, assumes facts
14:17:04 2 not in evidence.

14:17:05 3 MR. GREENBERG: That's why I am asking.

14:17:06 4 Q. Is that what you testified?

14:17:08 5 A. No.

14:17:08 6 Q. Let me ask you a different question. You say you
14:17:11 7 licensed your designs. Did you and Mr. Tull ever
14:17:14 8 sit down and have a discussion about the terms of
14:17:18 9 this license?

14:17:19 10 A. No. I don't think so, no.

14:17:23 11 Q. Did you discuss the terms of this license with
14:17:27 12 anyone else in the Arsenic & Apple Pie partnership?

17:32 13 A. No.

14:17:34 14 Q. Were the terms of this license only existing in
14:17:36 15 your own mind?

14:17:38 16 A. No. I specifically -- when we drew up the
14:17:44 17 operating agreement, I specifically made sure there
14:17:47 18 was no language that would deprive me of my
14:17:52 19 intellectual property.

14:17:54 20 Q. Well, that's not really my question.

14:17:56 21 A. Well then, yes, because it was discussed in the
14:17:58 22 drafting and I had some language removed.

14:18:03 23 Q. You had some language removed from the operating
14:18:06 24 agreement --

18:07 25 A. Right.

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18:07 1 Q. -- which you were concerned would affect a transfer
14:18:11 2 of your intellectual property rights. Is that what
14:18:15 3 you are saying?

14:18:15 4 A. Yes, that was my concern.

14:18:17 5 Q. All right. So in the Partnership Agreement that
14:18:24 6 we've been looking at, Exhibit 2, there isn't any
14:18:27 7 language regarding intellectual property rights, is
14:18:30 8 there?

14:18:31 9 A. No, that was just a preliminary agreement --

14:18:34 10 Q. Okay.

14:18:35 11 A. -- before the LLC.

14:18:37 12 MR. SOMMERS: Just answer the question
18:38 13 that is being asked. Keep it simple.

14:18:42 14 THE WITNESS: Okay.

14:18:42 15 MR. GREENBERG:

14:18:49 16 Q. Did the LLC operating agreement -- well, actually
14:18:53 17 hold on a second.

14:19:55 18 Mr. Montwillo, what language was removed
14:19:56 19 from the operating agreement that you were
14:19:59 20 concerned would have some impact on your
14:20:01 21 intellectual property rights?

14:20:03 22 A. I don't recall exactly.

14:20:05 23 Q. Okay.

14:20:06 24 A. I do recall it was there.

14:20:07 25 Q. You recall something was there?

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3:56 1 something.

14:53:58 2 Q. I'm sorry?

14:53:59 3 A. It's a sticker.

14:54:04 4 Q. Okay. Do you know what was there before?

14:54:07 5 A. I don't know what is under there.

14:54:11 6 Q. You don't know what is under it?

14:54:12 7 A. No.

14:54:13 8 Q. Was there a sticker on the first one regarding the

14:54:19 9 copyright date or is it printed on the box?

14:54:22 10 A. It's printed on the box.

14:54:23 11 Q. Okay. And you oversaw the production of these

14:54:26 12 boxes?

4:27 13 A. Yes.

14:54:29 14 Q. If you owned the copyrights to these designs, why

14:54:34 15 does the copyright notice say it's copyright

14:54:37 16 Arsenic & Apple Pie on both of these?

14:54:43 17 A. I don't know. I own the copyrights to the dolls.

14:54:57 18 Q. Okay. Now, from the 1997 partnership agreement

14:55:03 19 date, through to the dissolution of the LLC in

14:55:09 20 2004, am I correct that all costs for the design,

14:55:15 21 development, manufacture and distribution of the

14:55:23 22 dolls was paid for by Bill Tull?

14:55:23 23 A. Bill Tull made a loan to the company, yes.

14:55:26 24 Q. To cover those costs?

5:28 25 A. Yeah. So the company paid for them.

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31:46 1 MR. SOMMERS: Again, why don't you do it
15:31:47 2 that way, not that globally.
15:31:47 3 MR. GREENBERG:
15:31:48 4 Q. Other than the body --
15:31:49 5 A. Right.
15:31:51 6 Q. Well, let's back up. With respect to those three
15:31:53 7 dolls, Trailer Trash Doll, Blonde Drag Queen and
15:31:56 8 Red Head Drag Queen, you didn't design the body.
15:31:59 9 Is that correct?
15:32:01 10 A. That's correct.
15:32:03 11 Q. What did you design on those three dolls?
15:32:10 12 A. The clothing. The pants. The accessories.
15:32:21 13 Q. Okay.
15:32:22 14 MR. SOMMERS: Was there anything besides
15:32:23 15 the body that you didn't design?
15:32:26 16 THE WITNESS: The only thing I didn't
15:32:27 17 design was the body. We used standard bodies. I
15:32:30 18 designed everything else.
15:32:34 19 MR. GREENBERG:
15:32:34 20 Q. And taking a look at the box we've got here, which
15:32:40 21 we're not going to be able to attach to the record,
15:32:42 22 but I'll just represent -- and I think that we've
15:32:45 23 already concluded that this is one of the designs,
15:32:47 24 Trailer Trash Edition 1. Is that correct?
15:32:50 25 A. Yes.

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32:53 1 Q. This particular design features the model, the doll
15:33:01 2 in what looks to be a representation of blue jean
15:33:06 3 shorts. I believe you previously made reference to
15:33:11 4 these as "Daisy May" shorts?

15:33:13 5 A. Daisy Duke shorts.

15:33:16 6 Q. Daisy Duke shorts. And does that come from "The
15:33:19 7 Dukes of Hazard" television show?

15:33:22 8 A. Yes.

15:33:22 9 Q. The character of Daisy Duke? That's how you were
15:33:26 10 describing them.

15:33:27 11 A. There was a reference, yes.

15:33:33 12 Q. And the doll also is wearing a red and white
33:38 13 checked halter top. Is that how you would
15:33:42 14 characterize that garment?

15:33:46 15 A. Well, I guess halter top isn't correct, but --

15:33:49 16 Q. How would you describe it?

15:33:51 17 A. I can't remember the correct word for that.

15:33:54 18 Q. Is it a crop top?

15:33:55 19 A. Crop top maybe, something. I don't know. Skimpy,
15:33:59 20 skimpy thing on top.

15:34:02 21 Q. Right. And the hairdo of the doll is pig tails?

15:34:07 22 A. Yes.

15:34:08 23 Q. Pig tails and bangs?

15:34:11 24 A. And black roots, yes.

15:34:12 25 Q. And notably the black roots.

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34:15 1 A. And the cigarette, yes. And the blue eye shadow.

15:34:16 2 Q. Okay. Cigarettes, blue eye shadow.

15:34:23 3 Have you ever seen characters in

15:34:26 4 literature, movies or any other genre, where these

15:34:32 5 elements are incorporated to convey rural or poor

15:34:38 6 white individuals?

15:34:39 7 A. Well, that's what I was trying to convey; I mean,

15:34:42 8 it obviously stems from a stereotype.

15:34:48 9 Q. And these elements are elements of that stereotype,

15:34:52 10 right?

15:34:53 11 A. Yes.

15:34:53 12 Q. Would it be fair to say that with respect to the

34:56 13 Blonde Drag Queen and the Red Head Drag Queen, that

15:34:59 14 you attempted also to utilize similar genre

15:35:05 15 stereotypes to convey the impression of what the

15:35:08 16 doll was?

15:35:09 17 MR. SOMMERS: Objection, horribly vague.

15:35:11 18 Horribly, horribly vague.

15:35:16 19 THE WITNESS: No.

15:35:17 20 MR. GREENBERG: Okay.

15:35:19 21 Q. With respect to the Blonde Drag Queen, what

15:35:23 22 elements did you add to that design?

15:35:28 23 A. Everything but the body.

15:35:30 24 Q. And what were those elements; what is the

15:35:32 25 everything?

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15:35:35 1 A. Dress, purse, hair, makeup. Everything.

15:35:42 2 Packaging. Whatever.

15:35:46 3 Q. And how would it be that someone looking at that

15:35:50 4 doll would know that it was supposed to be a drag

15:35:53 5 queen as opposed to an actual female?

15:36:05 6 A. It has a male body. It's exaggerated makeup. It's

15:36:16 7 a drag queen.

15:36:19 8 Q. From your expression --

15:36:21 9 A. I'm like, what? It's a drag queen.

15:36:24 10 Q. Right. My sense is that the elements that you

15:36:26 11 incorporated were so clear that anyone looking at

15:36:29 12 it would know it was a drag queen. Is that right?

15:36:32 13 A. That's correct.

15:36:33 14 Q. And in order for that to happen, people looking at

15:36:38 15 this have to have a stereotype in mind of what a

15:36:42 16 drag queen is. Isn't that also true?

15:36:45 17 MR. SOMMERS: Objection, argumentative.

15:36:46 18 THE WITNESS: No.

15:36:47 19 MR. GREENBERG: No?

15:36:47 20 THE WITNESS: No.

15:36:48 21 MR. SOMMERS: Calls for opinion.

15:36:53 22 MR. GREENBERG: Okay.

15:36:59 23 Q. How would you characterize the hair on the Blonde

15:37:01 24 Drag Queen?

15:37:02 25 MR. SOMMERS: Objection, vague.

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37:06 1 MR. GREENBERG:

15:37:06 2 Q. Well, what choice did you make as to what the hair

15:37:09 3 should be for the Blonde Drag Queen?

15:37:11 4 MR. SOMMERS: Objection, vague. Go

15:37:12 5 ahead.

15:37:13 6 THE WITNESS: I chose long blonde hair.

15:37:15 7 MR. GREENBERG:

15:37:15 8 Q. Why?

15:37:17 9 A. I knew I was going to do a white dress. So a lot

15:37:23 10 of drag queens like to do Marilyn, so I put the

15:37:27 11 blonde in a white dress.

15:37:30 12 Q. Sort of to evoke the drag queen version of Marilyn?

37:33 13 A. Yes.

15:37:38 14 Q. Was the Red Head Drag Queen evocative of any

15:37:43 15 celebrity?

15:37:47 16 A. Brian O'Rourke.

15:37:48 17 Q. And who is that?

15:37:49 18 A. A friend of mine.

15:37:51 19 Q. And does Brian O'Rourke on occasion attire himself

15:37:57 20 as a drag queen?

15:37:58 21 A. Yes.

15:38:00 22 Q. So this was designed to look like him?

15:38:03 23 A. Yes.

15:38:06 24 Q. Did you get a license from him?

38:09 25 A. No. No, I did not. I believe he has the original

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01:44 1 Q. Going back to Exhibit 4, July 13, 2004, this is
16:01:49 2 your letter to Mr. Wong. You state in the third
16:01:56 3 paragraph, "I hold the copyrights to all my
16:01:59 4 designs, not the company." We've gone over that
16:02:01 5 once or twice before.

16:02:04 6 Was it your understanding, Mr. Montwillio,
16:02:08 7 that as of July 13, 2004, Arsenic & Apple Pie
16:02:16 8 intended to continue to sell the dolls that you
16:02:22 9 claim you held the copyrights to?

16:02:24 10 A. That was a response. I don't recall the letter it
16:02:28 11 was in response to. I was addressing a letter I
16:02:30 12 received from Mr. Wong.

02:32 13 Q. Okay. After July 13, 2004, was it your
16:02:36 14 understanding that Arsenic & Apple Pie continued to
16:02:38 15 sell the designs -- the dolls that embodied the
16:02:43 16 designs you claim to own?

16:02:45 17 A. Yes.

16:02:53 18 Q. Did you prior to the filing of the copyright
16:02:56 19 infringement lawsuit in this case, ever send notice
16:03:01 20 to Arsenic & Apple Pie that you believed that they
16:03:05 21 were violating your copyright?

16:03:09 22 A. You are looking at it.

16:03:11 23 Q. Okay. So in your view this letter of July 13,
16:03:14 24 2004, was you sending notice to them that they were
16:03:18 25 violating your copyright?

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03:19 1 A. Yes.

16:03:23 2 MR. SOMMERS: I'll object to the extent
16:03:25 3 that that requests a legal conclusion.

16:03:38 4 MR. GREENBERG:

16:03:43 5 Q. Mr. Montwillo, your counsel filed on your behalf
16:03:46 6 what are referred to by lawyers as initial
16:03:52 7 disclosures, and those initial disclosures include
16:03:56 8 lists of witnesses and other elements in the case.
16:03:59 9 I need to find out who some of these people are, so
16:04:03 10 I'm going to ask you some questions about that.16:04:05 11 I'm not asking you about any of the legal
16:04:07 12 conclusions, if any there are in this disclosure,
16:04:10 13 but I need to find out who these people are. All
16:04:13 14 right?

16:04:14 15 A. Okay.

16:04:14 16 Q. Can you tell me, please, who Eloise Clark is?

16:04:20 17 A. No. Eloise Clark?

16:04:23 18 Q. E-L-O-I-S-E Clark it says will testify that Gibby
16:04:28 19 Novelties, LLC sold the copyrighted dolls. Do you
16:04:32 20 know who that person is?16:04:34 21 MR. SOMMERS: I think she's the
16:04:35 22 accountant or bookkeeper for Gibby Novelties.

16:04:40 23 MR. GREENBERG:

16:04:41 24 Q. Would it be fair to say you don't know who that
16:04:43 25 person is?